

"We understand that the president has the right to name nominees that he chooses," Shah said recently. "We are willing to look at the record and their political views and see if they will make good judges . . . and not turn back the clock on civil rights, women's rights and environmental protections."

[From the Colorado Springs Gazette, May 8, 2002]

JUSTICE DELAYED

BLOCKING NOMINEES IS AN OLD POLITICAL GAME—AND IT'S UNDERMINING OUR COURTS

Let's not be naive about how presidential picks, especially for the judiciary, quickly can become political pawns for members of Congress. Holding up a nominee to the bench or to any other office requiring the Senate's advice and consent has become nothing less than a venerated tradition. And it's a bipartisan affair even as each side howls with indignation when the other does it.

Sometimes it's indulged for philosophical reasons—a judicial nominee's stance on abortion or capital punishment, for example. Other times the stonewalling is mundanely political—perhaps some senators want a president to back off of a threatened veto of major legislation. A pending nomination can prove a useful bargaining chip. It all makes for a very old game, and it has been that way almost every time the White House has changed tenants over the years.

But that doesn't make it right. More to the point, the inclination of senators to make judicial appointees cool their heels interferes with the administration of justice. The latest joust between the Senate and the presidency is no exception.

To their credit, Colorado Republican U.S. Sens. Ben Nighthorse Campbell and Wayne Allard have written a letter to the Chairman of the Senate Judiciary Committee, Patrick Leahy, D-Vt., making just that point.

"The current state of judicial nominations is unacceptable. It has devolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our nation depends," they wrote.

Of particular concern to the Colorado delegation is the status of Colorado's former solicitor general, Tim Tymkovich, who was nominated by President Bush in 2001 to fill the Colorado vacancy on the 10th Circuit Court of Appeals. Saturday will mark the one-year anniversary since Tymkovich's nomination was sent to the Judiciary Committee.

It's not as if there are some glaring blemishes on the man's resume. On the contrary, his nomination enjoys the broad support of our state's legal community, and he was deemed qualified when rated by the American Bar Association. and still he remains in limbo.

To reiterate, we're not being naive here. This is an old syndrome that conforms to no political boundaries. Indeed, a couple of years ago, it was Allard who for a time helped delay the nomination of a Clinton administration pick for the 10th Circuit bench.

But the underlying point the Senators make in their letter to Leahy is well taken. Quite simply, there's a slate of looming vacancies on the federal bench across the country thanks in large part to backlogged nominations, and it risks paralyzing the courts.

Whatever reservations members of either party might harbor about any given nominee, and however substantive those concerns may actually be on occasion, at some point they pale next to the need for any judge at all to attend to the logjam in federal courts.

Swift justice is supposed to be a hallmark of our system; its prospects don't look good while the likes of Leahy are making it harder to get before a judge at all.

[From the Rocky Mountain News, May 9, 2002]

GOP MAY PROTEST DELAY ON HEARINGS

COLORADAN IS AMONG BUSH JUDICIAL NOMINEES

(By M.E. Sprengelmeyer)

WASHINGTON.—Republicans might slow action in the U.S. Senate today to protest a yearlong delay in confirming President Bush's judicial nominees, including one from Colorado.

Saturday will be the one-year anniversary of Bush's nomination of Tim Tymkovich to the 10th Circuit Court of Appeals in Denver.

But he's still waiting for a confirmation hearing, as are eight of the first 11 judicial nominees Bush made a year ago today.

Republican Senators will call attention to the issue in a morning press conference, and then they are expected to invoke procedural maneuvers to slow the Senate's work throughout the day.

"It will be a slowdown in order to make their point," said Sean Conway, spokesman for Sen. Wayne Allard, R-Loveland.

Last week, President Bush called the situation a "vacancy crisis," especially in the 12 regional Courts of Appeals, where one in six judgeships remains vacant. The Denver-based 10th Circuit is still waiting for nominees Tymkovich and Michael McConnell of Utah to get hearings.

In response, Senate Judiciary Committee Chairman Sen. Pat Leahy, D-Vermont, pointed out that the Senate had confirmed 52 of Bush's nominees since Democrats took control 10 months ago. He said Bush should share the blame for other delays.

"Controversial nominations take longer, and the President can help by choosing nominees primarily for their ability instead of for their ideology," Leahy said in a release.

Some groups have questioned McConnell's nomination, claiming that the University of Utah professor would weaken the separation of church and state. They also question his views because he once represented the Boy Scouts of America in its bid to exclude homosexuals. McConnell backers say the fears are based on misunderstandings and that he has been endorsed by several Democratic academics.

But there is little controversy over Tymkovich, Colorado's former solicitor general.

Last month, Allard and Sen. Ben Nighthorse Campbell, R-Ignacio, wrote Leahy, demanding that Tymkovich get a hearing.

"It has devolved into a petty game of entrenchment, creating a vacancy crisis that prevents the service of the very justice upon which our nation depends," they wrote.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. I thank the Chair.

I congratulate Senator ALLARD for an excellent statement. I have a similar story to tell of one of our nominees from the State of Arkansas.

THE PRESIDENT'S COMMITMENT TO EDUCATION

Mr. HUTCHINSON. Mr. President, before I begin discussing the judicial nomination, I wish to respond to the colloquy that took place on the other side of the aisle regarding our President's commitment to education.

I serve on the Education Committee, and I was privileged to serve on the conference committee on the Leave No

Child Behind legislation which reauthorized the Elementary and Secondary Education Act and which was signed into law in January. I saw for more than a year the President's and this administration's deep commitment and involvement to reforming and fully funding our education legislation and our commitment to our elementary and secondary education, special education under IDEA, and the bilingual and other programs that were reauthorized in this legislation.

We have incredible leadership in the White House, and that is why this bipartisan legislation passed by over 80 votes in the Senate. It disappoints me and hurts me to hear my colleagues on the other side of the aisle attack this administration and question its commitment to education. We saw in 30 years under Democrat control an education policy that got us nowhere, in which the learning gap between high-achieving and low-achieving students never narrowed, in which test scores, instead of rising, continued to fall.

Now we have a President who has said: Let's try something different; let's put real accountability into education; yes, let's increase funding, with dramatic increases in title I, dramatic increases in IDEA, special education, and dramatic reforms and increases in bilingual education; but let's accompany spending increases with accountability; let's not just spend more, let's spend smarter.

I, for one, stand and applaud the President for his leadership. I can only say as the President's poll numbers soar on leadership in education and Republicans in general score better on education than ever before, that is the only explanation for the misguided attack on the President on the education issue which we just heard today.

JUDICIAL NOMINATIONS

Mr. HUTCHINSON. Mr. President, I wish to speak about the tragic hold up of our circuit court nominees to the Federal bench. It takes only a few numbers to show the dramatic vacancy crisis we are facing in the Federal court system: 10 percent of Federal judgeships are vacant right now, 85; 20 percent of judicial seats at the Federal courts of appeals are vacant. With eight openings, half of the entire Sixth Circuit is now vacant. It is operating at half strength.

The Judiciary Committee has held a hearing on only one of President Bush's seven nominees for the Sixth Circuit, and that hearing was held just a week and a half ago after pending for over 6 months. Two of the Sixth Circuit nominees, Jeffrey Sutton and Deborah Cook, were nominated a year ago today but have not yet had a hearing.

Do they question their ability? The ABA rated both nominees as unanimously qualified, but they have languished for a year.